IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 298 OF 2004

IN

SUMMARY SUIT NO. 2347 OF 2003

Mr.Vishnu Ajboni, Prop of
M/s.Deco Plywood .. Plaintiffs

versus

M/s.Klenzaido Bio Clean Devices
Pvt. Ltd. .. Defendants

...

Mr.Pramod Kumar Parida for the plaintiff.

Mr.Shiralkar for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 23rd March 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. This Summons for Judgement is taken out by the

plaintiff in a suit filed by it for recovery of the price of the goods sold and delivered to the defendant. The only defence that is raised by the defendant in the affidavit in reply is that the suit cannot be tried as a summary suit because the amount is claimed to be due at the foot of the account. In addition, the learned counsel for the defendant orally submits that there is no agreement to pay interest and therefore, also the suit is not maintainable. The defendant had issued two cheques one for Rs.1,37,990/- and second for Rs.56,908/- towards payment of the two bills Exhibit-A1 and A2 of the plaint. The defendant has not denied the receipt of the goods covered by invoice at Exhibit A1 and A2 and has also not denied the receipt of the invoices. The defendant has also not denied the issuance of the said two cheques.

3. Thus, in my view, there is no defence available to the defendant in respect of the amounts covered by two cheques.

4. Hence, Summons for Judgement is made partly absolute and there shall be a decree against the defendant in the sum of Rs.1,94,898/ being the amount

equivalent of the two cheques issued by the defendant.

5. The defendant shall pay the said sum of Rs.1,94,898/- to the plaintiff together with interest thereon at 9% p.a. from the date of the suit till payment. The question of costs would be considered at the time of the trial of the suit.

6. The defendant is granted unconditional leave to defend rest of the suit claim. The suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of six weeks.

D.G. KARNIK, J